IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 422 of 2006

Date of decision: 23.10.2007.

Tej Straw Board (Pvt.) Ltd. & Anr. … Petitioners

Versus

State Bank of India & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the Petitioners: Mr. Bimal Gupta with Mr. Karan Singh Kanwar, Advocates.

For the respondents: Ms. Devyani Sharma, Advocate, for respondents No. 2 & 4.

Per V.K. Ahuja, J.:

This writ petition has been filed by the petitioners under Articles 226/227 of the Constitution of India, for setting aside the orders passed by the respondents vide which they have declined for one time settlement of dues as proposed by the petitioners.

Briefly stated the facts of the case are that to set up an industrial unit, petitioner No. 1 company took financial assistance by way of loans from various financial institutions including respondent No. 1 to the extent of Rs.3.5 lacs for working capital. Respondent No. 1 secured the loan by floating charge on raw material and on finished goods as well as by way of second charge on plant, machinery and building of the unit. In the year 1983, petitioner No.1 company was in

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

need of adhoc additional working capital and sought working capital limit of Rs. 1 lac from respondent No. 1 over and above Rs.3.5 lacs already obtained by the company. Petitioner No. 2 provided House No. 3086, Sector 35-D, Chandigarh, as a collateral security for the additional limit of Rs.1 lac. An affidavit was also filed by petitioner No. 2 by depositing of original title deed of his property for loan amounting to Rs. 1 lac. It was clearly mentioned that the equitable mortgage is for limit of Rs. 1 lac for purchase of baggasse. This equitable mortgage title deed was created by petitioner No. 2 in favour of the bank for obtaining additional loan of Rs. 1 lac. It was alleged that the petitioner company paid back additional loan with a few months and the collateral security i.e. title deed of the house at Chandigarh was released by the bank to him. However, the petitioner company was not able to pay the other loan and in the year 1986, the petitioner company wrote to respondent No. 2 expressing his desire to repay the entire dues of the company. The bank filed Civil Suit for recovery of the amount which was decreed by the District Judge, Sirmour at Nahan and the original title deed of the property in question was not produced in the suit. The said judgment of the District Judge became final and some arbitration award also was given in between the parties in a division of the family property and the house at Chandigarh fell to the share of Mrs. Sonia Bakshi, niece of petitioner No. 2, who entered into an agreement to sell and thereafter, a suit was filed for Specific Performance against her on the basis of the agreement dated 6.4.1989. A suit was filed by the bank in this Court and the defendants were restrained from realizing the rent of the house as well as from alienating the said house till the disposal of the suit.

It was further alleged by the petitioner that in the year 2001, he came to know of some guidelines issued by the Reserve Bank of India for defaulting loanees for one time settlement and the petitioners also applied for one time settlement but the same was not agreed to by the respondents since the bank has classified the case of the petitioners as a fraud case on the ground that petitioner No.2 had tried to sell the property at Chandigarh which was mortgaged with the bank. The petitioners wrote letters to the respondents but the bank has considered the case of the petitioners as malfeasance and the petitioners have filed the present writ petition on the ground that they cannot deprive them from one time settlement without notice or hearing the petitioners and, therefore, the rejection of the case of the petitioner is arbitrary and in violation of Article 14 of the Constitution of India. Hence the petition filed by the petitioners.

In their reply, the respondents have controverted the allegations made by the petitioners in the writ petition and they have justified their stand of rejection of the claim by them.

We have heard the learned counsel for the parties and have gone through the record of the case.

This fact is not disputed by the petitioners that a mortgage deed was created in regard to the property at Chandigarh and the title deeds were given to the bank as collateral security. These title deeds are not with the respondents for one reason or the other, but the petitioners were unable to produce any document on record to show that these title deeds were ever returned to the petitioners by the respondents at any time. These documents would not have been returned to the petitioners except by writing a letter and no such letter has been produced on record vide which the respondents returned the

title deeds of the property at Chandigarh in favour of the petitioners. It is also clear from the assertions made by the petitioners themselves that some family partition took place and in such family partition, the award of the property at Chandigarh was made in favour of the niece of the petitioner who entered into an agreement for sale of the said property and no such sale could be effected until and unless the title deeds were in possession of the petitioner or his niece.

During the course of arguments, a reference was made to Annexure P-11, revised RB guidelines for one time settlement. The guideline No. 6.3 reads as under:

> "6.3. The revised guidelines will cover NPAs (below the prescribed ceiling) relating to all sectors including the small sector. The guidelines will not, however, cover cases of wilful default, fraud and malfeasance. The banks should identify cases of wilful default, fraud and malfeasance and initiate prompt action against them. Revised guidelines for compromise settlement of dues relating to NPAs of public sector banks in all sectors are given below."

It is, therefore, clear that since the case of the petitioners was considered that of malfeasance, the respondents have refused to agree to one time settlement as per policy framed by them. The petitioners have no inherent right that once they have applied for one time settlement, their case should be considered by the respondents and they should agree to one time settlement. The petitioners have to fall within the scheme and the guidelines issued in this regard and in case, it is a case of wilful default, fraud or malfeasance, in the opinion of the respondents they can refuse to agree to this one time settlement. The petitioners have the remedy to file the writ petition only in case they are being

discriminated by the respondents, even though they are covered by the guidelines, then only the question of discrimination will arise not otherwise. In the present case, there is no case of discrimination and since the petitioners' case do not fall within the guidelines issued by the R.B.I. for one time settlement, their claim was rightly rejected by the respondents and those orders issued by the respondents are not liable to be set aside. There is no merit in the writ petition filed by the petitioners and the same is dismissed accordingly. There is no order as to costs.

(V.K. Ahuja)
Judge

(Deepak Gupta)
Judge

October 23, 2007
(BSS)